IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-786

RICHARD S. SMALL, *Appellant,*

v.

BOARD OF BAR EXAMINERS OF THE NEVADA STATE BAR, *Appellees.*

On Appeal From the Supreme Court of Nevada

MOTION OF APPELLEES MANOUKIAN, GUNDERSON, MOWBRAY, STEFFEN AND SPRINGER TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

Whether Appellant has properly invoked the jurisdiction of the Supreme Court under 28 U.S.C. § 1257(2)?

Whether Appellant has stated a substantial federal question reviewable by appeal or certiorari?

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Appellees Manoukian, Gunderson, Mowbray, Steffen and Springer, the individual Justices of the Supreme Court of Nevada, are of the opinion they have been improperly served as Appellees in the instant

matter. These Appellees were not parties in any proceeding involving the Appellant below. It is only a judicial decision of the Supreme Court of Nevada which is before this Court. However, in the event this Court should conclude that the individual Justices of the Supreme Court of Nevada are properly designated Appellees in the instant matter, they do respectfully move this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Nevada on the grounds (1) that the validity of no statute of any state has been drawn in question by Appellant, and (2) that the questions on which the decision of the cause depends are not substantial federal questions requiring further argument.

I.

THE NATURE OF THE CASE AND THE PROCEEDINGS BELOW

Appellant unsuccessfully sought a waiver of Rule 51(3) as adopted by the Supreme Court of Nevada originally in 1946. Rule 51(3) requires applicants for the Nevada bar examination to present proof of graduation from a law school approved by the Committee on Legal Education and Admissions to the Bar of the American Bar Association. Appellant is a graduate of Western State University College of Law, which is not now, and never has been, accredited as a law school by the American Bar Association. Appellant's petition to the Supreme Court of Nevada for a waiver of the accreditation rule conceded that Rule 51(3) is a rational means whereby the Supreme Court of Nevada may, in the best

interest of the public, determine the character and general fitness to practice law of those who wish to do so in the State of Nevada. Appellant argued in his petition only that waivers to the rule had been given in the past and that he should likewise receive a waiver. Any denial of a waiver to Appellant would, according to Appellant, be a violation of his Fourteenth Amendment rights.

After due consideration of his arguments and contentions, the same were found by the Supreme Court of Nevada to be without merit for the reasons cited in its decision in In Re Nort, 96 Nev. 85, 605 P.2d 627 (1980). Additionally, it was noted the petition for waiver was untimely under Rule 56(1)(b) of the Supreme Court of Nevada. The petition for waiver was denied by an order filed June 15, 1983.

A subsequent petition for rehearing was also denied on August 11, 1983. Appellant filed a timely notice of appeal to this court.

II.

ARGUMENT

A. NO STATUTE OR COURT RULE ATTACKED BY APPELLANT.

Appellant has failed to show that this case comes within this Court's jurisdiction as an appeal under 28 U.S.C. § 1257(2). By failing in his petition for waiver of Rule 51(3) of the Supreme Court of Nevada to challenge the constitutionality of any state statute, or its equivalent, a court rule, Appellant has not called in question the validity of any such statute or court rule, nor did the denial of his petition for waiver of a court rule necessarily constitute a decision in favor

of validity of said rule. At most, Appellant alleged below that waivers must not be granted or denied in an arbitrary or capricious manner, nor may they be given to some and denied others without a valid reason.

Where an appellant merely claims a deprivation of federal rights by procedures which adversely affect him, he does not establish any jurisdictional basis for appeal to this Court under 28 U.S.C. § 1257(2). At best, discretionary review under 28 U.S.C. § 1257(3) might be possible. Rohr Aircraft Corporation v. San Diego County, 362 U.S. 628 (1962); Wilson v. Cook, 327 U.S. 474 (1946); Charleston Federal Savings and Loan v. Alderson, 324 U.S. 182 (1945); Merzenthaler Linotype Company v. Davis, 251 U.S. 256 (1920). For the reasons set

forth below, even certiorari should be denied in the instant matter.

Even if Appellant had properly raised an attack on a state statute or court rule below, he has failed to continue any such attack in his documents filed with this Court. On page (i) of his Jurisdictional Statement under the heading "Questions Presented," none of the alleged questions challenges the constitutionality of any state statute or court rule. Such a shortcoming by Appellant is a further ground for dismissal of his appeal. Charleston Federal Savings and Loan v. Alderson, supra.

B. APPELLANT RAISES NO SUBSTANTIAL FEDERAL QUESTION.

None of the three questions listed by Appellant in his Jurisdictional Statement constitutes a substantial

federal question requiring further argument to this Court. Indeed, only the first question listed is even worthy of any comment.

Appellant suggests his petition for waiver of Rule 51(3) of the Supreme Court of Nevada was without explanation when other graduates from the same school he attended had received waivers in prior years. Although the Supreme Court of Nevada did not write a lengthy decision on the Appellant's petition, it did, in its order, specifically refer to its earlier opinion in In Re Nort, 96 Nev. 85, 605 P.2d 627 (1980) as the basis for its decision. Nort is a careful and explicit discussion by the Supreme Court of Nevada of the history and rationale of its prior rulings on petitions for waiver of the American Bar Association law school ac-

creditation rule. In particular, the Supreme Court of Nevada in Nort explained why in 1977 and 1978 it granted several waivers to graduates of Western State University College of Law and why beginning in 1979 it would no longer do so. The reason given for granting waivers in the 1977-78 time period related to the allegations that Western State was actually in compliance with all American Bar Association criteria except Rule 202, since it was a proprietary school, and that the only reason the law school was not accredited was for a reason unrelated to its educational quality.

By late 1979 the Supreme Court of Nevada stated it had new information to evaluate, including the well written decision of the Supreme Court of Minnesota in the case of Application of Hansen, 275

N.W.2d 790 (1978), appeal dismissed, 441 U.S. 938 (1979). The Supreme Court of Nevada had learned that notwithstanding the fact it had received the opportunity to do so, Western State University College of Law had failed to apply for American Bar Association certification. After its re-evaluation, Nevada's highest court concluded it could no longer accept the simple assertion that law schools like Western State were unaccredited solely because of the operation of American Bar Association Rule 202. In Nort, the Supreme Court of Nevada also made clear that the burden of proof lies with an applicant to make a showing to the contrary.

All that Appellant offered in 1983 in support of his waiver petition were bare assertions by himself and his law school that Western State offers a

quality education and is in substantial compliance with all relevant factors that go into the quality education formula. Such bare, self-serving assertions, even when coupled with nice letters of personal recommendation of the applicant as an individual, do not even begin to constitute a threshold showing by the Appellant of compliance with the rule or justification for a waiver of the rule. A newspaper clipping from the January 25, 1982 edition of the Los Angeles Daily Journal, offered by Appellant as an exhibit to his petition for waiver, indicated the new president of Western State hoped to have his law school match all American Bar Association standards, adding that A.B.A. accreditation was a goal for the school. Such a reference was some indication that even Western State realized it did not

come up to A.B.A. standards in areas other than Rule 202.

This Court dismissed the appeal in Application of Hansen, 444 U.S. 938 (1979) for want of a substantial federal question. It is respectfully suggested the same action is warranted in the instant matter for the same reason. There is no constitutional right to practice law in one's home state, and there is no constitutional right to evade lawful, reasonable rules established to insure that those who would provide legal counsel to the general public meet certain minimum character and educational requirements.

III.

CONCLUSION

Wherefore, Appellees Manoukian, Gunderson, Mowbray, Steffen and Springer respectfully submit this case totally

fails to satisfy the jurisdiction requirements of 28 U.S.C. § 1257(2) in that no state statute or court rule was ever put in question by Appellant and the questions upon which this cause depends are not substantial federal questions requiring any further argument. Appellees therefore respectfully move this Court to dismiss the appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Nevada.

Respectfully submitted,

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APPENDIX

Rule 51. Qualifications of Applicants for Examination. An applicant for examination for a license to practice as an attorney and counsellor at law in this state shall:

* * *

3. Have received a degree of Bachelor of Laws, or an equivalent law degree, from a law school approved by the Committee on Legal Education and Admissions to the Bar of the American Bar Association, and shall present evidence of the same.

Rule 56. Number and Disposition of Applications: Approval by Board of Bar Examiners.

1. All applications for admission to practice law in Nevada shall be submitted in triplicate and filed with the Executive Secretary of the State Bar pur-

suant to subsection 1 of Rule 52. Upon receipt thereof, the Executive Secretary shall transmit immediately one copy to the Clerk of the Supreme Court. The remaining two copies shall be retained by the Executive Secretary for use in determining the applicant's qualifications for admission.

(a) The Executive Secretary of the State Bar may, upon reviewing the application, determine that the application is not completed or filed in accordance with the requirements of SCR 51 through 55, and may, upon notification of the prospective applicant, reject the application. Such notification shall include reference to the specific basis for the rejection.

(b) A prospective applicant whose application has been rejected pursuant to SCR 56(1)(a) may, within 30 days from the date of notification, file a

verified petition for relief with the Supreme Court, which shall be accompanied by proof of service of a copy thereof upon the Executive Director of the State Bar and the Board of Bar Examiners. Such petition shall be accompanied by copies of all relevant documents. If the Court is of the opinion that relief shaould not be granted, it may deny the petition. Otherwise, the Court may enter an order fixing time within which an answer may be filed by the Board of Bar Examiners. Should the Court determine that the petitioner is entitled to relief, it may direct the Board of Bar Examiners to process the application in accordance with SCR 57 to SCR 75.